

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NATHANIEL MARCUS GANN,

Plaintiff,

vs.

VALLEY STATE PRISON, et al.,

Defendants.

1:19-cv-01797-DAD-GSA-PC

**ORDER GRANTING DEFENDANTS' SECOND
MOTION TO MODIFY SCHEDULING
ORDER
(ECF No. 45.)**

**ORDER EXTENDING DEADLINE FOR FILING
EXHAUSTION MOTIONS**

NEW DEADLINE

New Exhaustion Motions Filing Deadline:

Feb. 2, 2022

I. BACKGROUND

Plaintiff Nathaniel Marcus Gann is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds with Plaintiff's First Amended Complaint, filed on February 7, 2020, against Defendants Warden

Raythel Fisher, Jr., Dining Hall Officer Paez, and Culinary Staff Members Anguiano, Chapas, Lucero, Marquez, Cruz, and Moosebaur for violation of RLUIPA, violation of the First Amendment Free Exercise Clause, and adverse conditions of confinement in violation of the Eighth Amendment; against Defendants Warden Raythel Fisher, Jr., and Moosebaur for failure to protect Plaintiff in violation of the Eighth Amendment; and against Defendant Moosebaur for retaliation in violation of the First Amendment. (ECF No. 20.)¹

On November 17, 2021, the court issued a Scheduling Order setting a deadline of January 24, 2022 for the filing of exhaustion motions. (ECF No. 40.) On January 19, 2022, Defendants filed a motion to modify the Scheduling Order. (ECF No. 45.)

II. MOTION TO MODIFY SCHEDULING ORDER

Modification of a scheduling order requires a showing of good cause, Fed. R. Civ. P. 16(b), and good cause requires a showing of due diligence, Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). To establish good cause, the party seeking the modification of a scheduling order must generally show that even with the exercise of due diligence, they cannot meet the requirement of the order. Id. The court may also consider the prejudice to the party opposing the modification. Id. If the party seeking to amend the scheduling order fails to show due diligence the inquiry should end and the court should not grant the motion to modify. Zivkovic v. Southern California Edison, Co., 302 F.3d 1080, 1087 (9th Cir. 2002).

Defendants request extension of the deadline to file exhaustion motions because of delays and staff shortages affecting the CDCR due to a recent outbreak of the Omicron Covid-19 virus.

The court finds good cause to grant Defendants' motion and shall extend the deadline for filing exhaustion motions to February 2, 2022.

III. CONCLUSION

Based on the foregoing, **IT IS HEREBY ORDERED** that:

1. Defendants' motion to modify the court's Scheduling Order, filed on January 19, 2022, is GRANTED; and

¹ On June 7, 2021, the court issued an order dismissing all other claims and defendants from this case, for Plaintiff's failure to state a claim. (ECF No. 30.)

2. The deadline for filing exhaustion motions is extended from January 24, 2022 to **February 2, 2022**; and
3. All other provisions of the court's August 24, 2021 Discovery and Scheduling Order remain the same.

IT IS SO ORDERED.

Dated: **January 20, 2022**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE